IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

ETRAILER CORPORATION, Plaintiff, v. AUTOMATIC EQUIPMENT MFG, CO. d/b/a BLUE OX a Nebraska Corporation Serve: Thomas Worthington Registered Agent First National Tower, Suite 3700 1601 Dodge Street Omaha, Nebraska 68047 Defendant.	Case No. **JURY TRIAL DEMANDED**

COMPLAINT

Plaintiff, etrailer Corporation ("etrailer"), for its complaint against Defendant, Automatic Equipment Mfg, Co. d/b/a Blue Ox, ("Blue Ox"), states as follows:

NATURE OF THE ACTION

1. This is a civil action for copyright infringement, false designation of origin, unfair competition and related claims under federal and state law.

2. etrailer is a leading online vendor of motor vehicle accessories, including trailer hitches, trailer parts, roof racks, bicycle racks, cargo carriers and towing accessories. Blue Ox is a manufacturer of towing supplies and has in the past supplied such goods to etrailer.

3. As part of its business and to assist its customers in making online purchasing decisions, etrailer expended great time and effort to create thousands of proprietary photographs and videos and makes these photographs and videos available for customer use on etrailer's website located at www.etrailer.com.

4. Rather than create its own original photographs or videos, Blue Ox willfully and knowingly copied etrailer's copyright protected photographs, removed etrailer's marks and signage from the photographs, posted the photographs on its website, www.BlueOx.com (the "Website"), used the photographs in catalogs and gave the photographs to etrailer's competitors.

5. Blue Ox's conduct has caused etrailer irreparable harm and, unless Blue Ox is enjoined from further copyright infringement, trademark infringement and unfair competition, etrailer will suffer further immediate and irreparable harm.

6. etrailer seeks herein permanent injunctive relief and actual damages, statutory damages, attorneys' fees and costs pursuant to federal and state laws governing copyrights, trademarks and unfair competition.

PARTIES

7. etrailer is a Missouri corporation with a principal place of business at 1507 Highway A, Wentzville, Missouri 63385.

8. Blue Ox is a Nebraska Corporation with a principal place of business at 1 Mill Road, Industrial Park, Pender, Nebraska, 68047. Blue Ox is in the business of manufacturing and selling towing products and parts.

JURISDICTION AND VENUE

9. This Court has original and exclusive subject matter jurisdiction of this action under 28 U.S.C. § 1338(a) and 28 U.S.C. §1331 because the action arises under federal copyright and trademark law and under 28 U.S.C. § 1332 because the parties hereto are citizens of different states and the amount in controversy exceeds $75,000.00.

10. This Court has supplemental jurisdiction over the subject matter of this action under 28 U.S.C § 1367(a) in that the state law claims are so related to the claims over which the Court has original jurisdiction that they form part of the same case or controversy.

11. This Court has personal jurisdiction over Blue Ox at least because of the following facts.

a. Blue Ox knowingly directed its activities at a Missouri-based entity in that etrailer's website prominently discloses etrailer's Missouri situs and residence on its contact page, which indicates:

Mailing Address:
etrailer
1507 East Hwy A
Wentzville, MO 63385

etrailer.com Warehouse Locations
Wentzville, Missouri **(HUB)**
St. Charles, Missouri

b. Blue Ox specifically and purposefully directed its acts and the intended effects of its acts to and into Missouri by targeting etrailer to be the victim of, not just a few isolated instances of infringement, but a large-scale theft of intellectual property assets, which required consistent, repeated and long-term acts of accessing, searching and copying of hundreds of images from etrailer's Missouri-based servers that hold website content and then scouring through the wrongfully copied images to remove etrailer's marks and other identifying indicia.

c. Blue Ox specifically and purposefully targeted etrailer by misusing its intellectual property on the Website for purpose of assisting competitors of etrailer to unfairly compete against etrailer in Missouri, among other states. Blue Ox thereby directed its acts at and into the state of Missouri and intended, knew and expected that the damage to and repercussions felt by etrailer would occur in Missouri at its principal place of business, which damage and repercussion have in fact been felt in Missouri and by etrailer.

d. In addition, Blue Ox markets, distributes and sells and has marketed, distributed and sold a substantial amount of products, including those to etrailer and other customers in the State of Missouri and within this judicial district.

e. In engaging in the unlawful activities stated herein, Blue Ox knew etrailer is a Missouri-based major online retailer of motor vehicle accessories against which Blue Ox's other customers would compete unlawfully using etrailer's images. Blue Ox thus knew of etrailer's existence, targeted etrailer's business and facilitated unlawful competition against etrailer in Missouri.

f. Blue Ox repeatedly and habitually has done business in Missouri for years by virtue of it having done business with etrailer and supplying it with product for an extended period of time.

FACTS

12. etrailer is a leading online vendor of motor vehicle accessories, including trailer hitches, trailer parts, roof racks, bicycle racks, cargo carriers and towing accessories.

13. Blue Ox is a manufacturer of towing products and owns and operates the "Website."

14. etrailer is the sole legal owner of a multitude of works ("Works") in the form of photographs and videos which it displays on its website for customers using its website to view. (This multitude of Works is collectively referred to herein as the "etrailer Portfolio.")

15. The Works of the etrailer Portfolio are original, creative works in which etrailer owns protectable copyright interests.

16. etrailer invested significant time and money building the etrailer Portfolio. In creating the Works etrailer took steps to ensure that its name, logos and marks (collectively "etrailer Marks") were prominently featured in the Works.

17. etrailer has obtained multiple active and valid copyright registrations with the United States Copyright Office, which registrations cover many of the Works of the etrailer Portfolio and many other photographic and videographic Works are the subject of pending copyright applications.

18. etrailer federally secured its rights to the Works in the etrailer Portfolio with Copyright Registrations in the United States Copyright Office. Exhibit A to this Complaint includes a listing of Copyright Registrations covering the Works, which list includes works infringed by Blue Ox.

19. etrailer has been at all times relevant hereto and is the sole owner of all rights, title and interest in and to the Copyright Registrations.

20. etrailer has displayed its copyrighted Works on its website http://www.etrailer.com to enable sales of its products depicted in those Works.

21. Blue Ox is the registered owner of the Website and is responsible for its content.

22. Blue Ox uses the Website to sell the same or similar merchandise as etrailer and Blue Ox profits from this sales activity.

23. Without license, permission or authorization from etrailer, Blue Ox infringed etrailer's copyrights by copying, modifying, displaying on its Website and in catalogs and disseminating to etrailer's competitors many of etrailer's Works (the "Infringements"). As noted, Blue Ox has infringed many of etrailer photographs and etrailer is correlating each infringed photograph to a registration number.

24. Blue Ox was aware of circumstances or facts from which the fact of infringement of etrailer's copyrights was apparent. To wit, etrailer believes that the number of unauthorized copies is at least in the hundreds. In addition, various photographs that were illegally misappropriated by Blue Ox depict an etrailer marking or logo on products or individuals shown in the particular Work. As part of its scheme to utilize etrailer's protected Works and defraud customers, Blue Ox removed or obscured etrailer's marks or indicia that appeared in certain of those photographs and videos.

25. Based upon the totality of the circumstances, Blue Ox cannot claim that it was not aware of the infringing activities.

26. Blue Ox engaged in the Infringements knowingly and in violation of United States copyright laws.

27. Blue Ox with knowledge of the Infringements of etrailer's copyrights failed to promptly stop same and specifically continued the display, possession and dissemination of etrailer's images.

28. Blue Ox has received a financial benefit directly attributable to the Infringements. Specifically, by way of the Infringement:

a. Blue Ox increased traffic to the Website and increased merchandise sales;

b. Blue Ox disseminated the images to etrailer's competitors and provided those competitors with an illegal and material advantage in competing against etrailer; and

c. Blue Ox took etrailer's Works to increase its own sales and those of etrailer's competitors without incurring the costs and effort spent by etrailer.

By doing so, Blue Ox and the competitors it assisted were able to sell products for unjustifiably competitive prices.

29. As a result of Blue Ox's acts as stated herein, etrailer has been substantially harmed.

COUNT I
Direct Copyright Infringement, 17 U.S.C. §501, et seq.

30. etrailer repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though fully set forth herein.

31. The Works are original, creative works in which etrailer owns protectable copyright interests.

32. etrailer has not licensed in any manner to Blue Ox a right to use any of the Works of its Portfolio. Nor has etrailer assigned any of its copyrights in any of those Works to Blue Ox.

33. Without permission or authorization from etrailer and in willful violation of etrailer's rights under 17 U.S.C. §106, Blue Ox illegally copied, reproduced, modified, distributed and publicly displayed etrailer's copyright protected works.

34. Blue Ox's reproduction and display of etrailer's Works on the Website and in catalogs constitutes willful copyright infringement, as does the dissemination of etrailer's Works to etrailer's competitors.

35. By virtue of the infringing acts of Blue Ox, an unknown amount of people have viewed the unlawful copies of etrailer's Works on the Website. Further, by virtue of the infringing acts of Blue Ox, etrailer's competitors have had a material unfair advantage in competing against etrailer.

36. Blue Ox had knowledge of the copyright infringement alleged herein and had the ability to stop the reproduction and display of Plaintiff's copyrighted material.

37. As a direct and proximate result of Blue Ox's acts, etrailer has been substantially harmed.

38. etrailer requests a permanent injunction pursuant to 17 U.S.C.§502(a) prohibiting Blue Ox from engaging in further infringing acts relating to the Works.

39. etrailer requests pursuant to 17 U.S.C.§505 its attorneys' fees and costs for the prosecution of this action.

COUNT II
Federal Unfair Competition and False Designation of Origin
(Lanham Act Section 43(a), 15 U.S.C. § 1125(a))

40. etrailer repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though fully set forth herein.

41. Blue Ox's unauthorized removal and alteration of the etrailer Marks in connection with the advertisement, offer for sale, and/or sale of the products through the webpages of the Website falsely designates, describes or represents the products sold by Blue Ox and their origin, and is likely to cause confusion, mistake, and deception as to the affiliation, connection, or association of the products with etrailer, or as to the sponsorship or approval of said products by etrailer.

42. Blue Ox's actions as alleged herein have diminished the goodwill in the etrailer Marks which etrailer has built up at great labor and expense.

43. Blue Ox's actions as alleged herein constitute unfair competition and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

44. Blue Ox's actions as alleged herein with respect to the etrailer Marks has caused etrailer to suffer economic harm, are likely to cause etrailer to continue to suffer economic harm and/or are likely to result in unjust enrichment to Blue Ox.

45. Blue Ox's actions as alleged herein with respect to the etrailer Marks have been deliberate, willful, and intentional, with full knowledge and in conscious disregard of etrailer's rights in the etrailer Marks.

46. As a result of the foregoing alleged actions of Blue Ox, etrailer has been injured and damaged.

COUNT III
State & Common Law Unfair Competition/False Designation of Origin
(Mo. Rev. Stat. §§417.056-417.066)

47. etrailer repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though fully set forth herein.

48. Blue Ox's actions as alleged herein with respect to the etrailer Marks constitute trademark infringement and unfair competition in violation of Mo. Rev. Stat. § 417.061 and in violation of the common law of Missouri.

49. Blue Ox's actions as alleged herein with respect to the etrailer Marks and alteration of the etrailer Works has caused, is causing and, unless enjoined by this Court, will continue to cause confusion and mistake in the marketplace and deception of the trade and public as to the source, origin, or sponsorship of the Website and the products depicted thereon.

50. Blue Ox's actions with respect to the etrailer Marks and alteration of etrailer's Works have caused and, unless restrained by this Court, will continue to cause, serious and irreparable damage to etrailer, including within the State of Missouri, for which etrailer is entitled to relief under the common law.

51. As a result of the foregoing actions of Blue Ox, etrailer has been irreparably injured. Unless the foregoing alleged actions of Blue Ox are enjoined, etrailer will continue to suffer such injury.

PRAYER FOR RELIEF

Wherefore, for the foregoing reasons, etrailer respectfully requests judgment as follows:

1. Entry of a judgment:

a. finding that Blue Ox has infringed etrailer's rights to the Works in violation of 17 U.S.C. §501, et seq.;

b. directing Blue Ox to provide to etrailer positive proof of destruction of any and all unlawful copies of etrailer's Works or allowing etrailer the right to effect same destruction; and

c. awarding monetary damages and injunctive relief to etrailer as follows:

i. Statutory damages against Defendant(s) pursuant to 17 U.S.C. §504(c) of $150,000 per infringement or in the alternative Plaintiff's actual damages and the disgorgement of Defendant's profits in an amount to be proven at trial;

ii. A permanent injunction against Defendant(s) pursuant to 17 U.S.C. § 502;

iii. Plaintiff's attorneys fees pursuant to 17 U.S.C. § 505; and

iv. Plaintiff's costs;

2. Entry of a judgment that Blue Ox has competed unfairly with etrailer in violation of etrailer’s rights under 15 U.S.C. § 1125(a) and the common law of Missouri;

3. Entry of a judgment that Blue Ox’s activities have violated Missouri law;

4. Entry of an order directing Blue Ox to compensate etrailer for any and all advertising or other expenses necessary to dispel the public confusion caused by Blue Ox’s unlawful acts;

5. Entry of a judgment against Blue Ox for monetary damages in an amount to be proven at trial, including but not limited to, all amounts necessary to compensate etrailer for Blue

Ox's wrongful use of the etrailer Marks, for Blue Ox's profits and for reasonable attorneys' fees and costs;

6. Entry of a judgment against Blue Ox for legal fees upon a finding that this case is exceptional under 15 U.S.C. § 1117, and for increased damages upon a finding of willfulness in Blue Ox's unlawful acts alleged herein with respect to the etrailer Marks, said award to equal at least treble etrailer's actual damages under 15 U.S.C. § 1117; and

7. Entry of a judgment awarding such other relief to etrailer that the Court determines is just and proper.

Respectfully submitted,

EVANS & DIXON, LLC

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